
WASHINGTON AND REGIONAL PROCESSING OF EXCHANGE ACT FILINGS

Background

Savings associations must provide full, fair, accurate and complete information regarding their business and financial condition to the investing public to avoid potential liability under the anti-fraud rules of the federal securities laws. It is essential to the supervisory efforts of the regional offices that regulators be aware of critical information disclosed in filings.

The Business Transactions Division (BTD) of the Office of Chief Counsel and the Accounting Policy Division (APD) of the Office of Supervision review Exchange Act and securities offering filings of savings associations for compliance with generally accepted accounting principles (GAAP), generally accepted auditing standards (GAAS), and with the Exchange Act and OTS regulations. Also, BTD, upon request, assists the SEC by reviewing filings of savings and loan holding companies referred by the SEC.

For purposes of this Appendix, we refer to BTD and APD as securities review staff when they perform dual functions. We refer to BTD and APD individually when they perform tasks independent of each other.

Coordination between regional and Washington staff is essential to ensure that savings associations fulfill their obligations to make full, fair, accurate, and complete representations to the public about their financial condition and operations. Reliable public disclosure and market integrity for saving association's securities are key to the savings association industry's capital-raising process.

General Procedures

The responsibility for reviewing disclosure documents filed by savings associations for compliance with the Exchange Act and the OTS securities offerings regulations rests with securities review staff. Securities review staff are responsible for issuing comment letters relating to a particular filing. Further, securities review staff are responsible for resolving legal, disclosure, and accounting questions that may arise under the Exchange Act and 12 CFR Parts 563b, 563d, and 563g. A specific attorney is assigned to each reporting savings association and reviews and examines all of that savings association's Exchange Act reports and any offering circulars it may file.

APD performs accounting reviews for the nontransactional Exchange Act filings and other filings and applications that contain financial statements. APD is primarily responsible for accounting reviews of the following forms: 8-K, 10, 10-SB, 10-K, 10-KSB, 10-Q, 10-QSB, 12b-25, applications for conversions, applications for conversions with mergers, and applications for mutual holding company conversions. The BTD staff is primarily responsible for accounting reviews for secondary offering circulars (of equity, debt and other securities) and mergers.

The regional office should contact securities review staff when questions arise with respect to a particular savings association's disclosure obligations. Also, the regional office should contact securities review staff by telephone or e-mail whenever information comes to their attention that potentially affects such reporting obligations.

Securities review staff closely review examination reports and other supervisory communications in connection with their review of securities filings to ensure appropriate disclosures in the filings. Staff works together to secure resolution of novel and precedential accounting issues.

APD generally issues accounting comments in conjunction with, but separate from, comments issued by BTD on the Exchange Act filings for which it has primary responsibility. Otherwise, BTD provides to the savings

association or other filing party all comments relating to the accuracy, adequacy, and timeliness of Exchange Act filings made with OTS. Securities review staff and the regional office receives copies of all comments and responses regardless of which office issues the comments.

Securities review staff maintains a shared electronic file of all comments on filings that is accessible by each regional accountant or a designee. The shared file ensures that each office is aware of each other's findings and can determine if there is a need for a supervisory response. Securities review staff and the regional office must be aware of problems that require disclosure in filings. The regional regulator must be aware of securities review staff comments, and responses to those comments.

Securities review staff will resolve all issues regarding a savings association's compliance with issued comments. Also, BTDD will resolve any necessary enforcement or other actions regarding compliance with filing requirements. In some instances, securities review staff may seek the assistance of a regional office in obtaining a savings association's compliance with comments. Securities review staff rely on regional regulators to observe and to report events that may affect Exchange Act disclosures, particularly events raising significant supervisory concerns. Regional regulators, therefore, must have a general knowledge of the content of a savings association's securities filings.

Time Requirements

For a report to be timely, OTS must receive a properly filed report by the required date. The mailing or postmarking of a report on the last day on which a report is to be filed does not constitute a timely filing.

A savings association may receive an extension of time to file a report if the savings association follows the procedures described in the regulations and satisfies all of the requirements of an extension. Exchange Act Rule (17 CFR § 240.12b-25) contains general provisions to follow if a savings association fails to file within a prescribed time frame all or portion of an Exchange Act periodic report. If a savings association fails to submit a complete Exchange Act periodic report within the prescribed time period, it must file a Form 12b-25. The savings association must file Form 12b-25 no later than one business day after the due date of such report. The association must disclose its inability to file the report on a timely basis and the reasons why in reasonable detail, and otherwise comply with all other requirements of Rule 12b-25. Among other things, the savings association must represent in the Form 12b-25 that it cannot eliminate the reasons for the delay without unreasonable effort or expense. The savings association also must represent that it will make the filing within the period of the extension. Rule 12b-25 provides for a 15-day extension for a Form 10-K or 10-KSB and a 5-day extension for a Form 10-Q or 10-QSB. Such extensions are available only upon an appropriate filing with BTDD. Only one 15- or 5-day extension period, as appropriate for the type of filing, is available. No additional extensions of time are available under the regulations.

If appropriate, a savings association may represent that its failure to file a timely prescribed report is due to its inability to file the report without unreasonable effort or expense. Generally, late reports satisfy prescribed due dates only if the savings association meets all conditions of the rules.

When a savings association is unable to file a report on time, it should promptly consider its general public disclosure obligations. The savings association should determine whether it is appropriate to issue a press release to advise its stockholders and the public markets of material information pertaining to the savings association. In this regard, savings associations may wish to contact BTDD or submit a written statement of the reasons for the delinquency. The statement should include a description of the steps the savings association is taking to come into compliance with the reporting requirements.

Regional Procedures

Securities oversight of savings associations is critically important. Regional regulators must alert the individual responsible for the particular savings association to all supervisory or other regulatory information that affects or may potentially affect securities law disclosure obligations. This reporting may be through e-mail. The use of e-mail provides more time for both the regional and securities review staff evaluation. Also e-mail facilitates the maintenance of the comments in a shared electronic file that is available to the regions and securities review staff.

Critical to an effective OTS oversight role is the certainty that regional personnel are thoroughly familiar with the current financial and operational condition of savings associations. Knowledgeable regional personnel should promptly review filings for supervisory concerns, and communicate any concerns to securities review staff. A critical component in securities review staff's Exchange Act oversight role is ensuring correction, as soon as possible, of any information in a public filing that is inaccurate, misleading, or incomplete. For this reason, regional regulators should promptly review Exchange Act filings, offering circulars, and applications for conversion.

The regional office should provide to securities review staff copies of all nonroutine correspondence to and from the savings association. Further, the regional office should provide copies of documents and internal memoranda that may contain information relevant to a savings association's disclosure obligations. Securities review staff examine this information to ensure that savings associations promptly comply with all disclosure obligations.

Achievement of successful supervision of savings association securities responsibilities requires uniformity and consistency of action. Regional personnel and BTB should coordinate a supervisory approach prior to initiating discussions with savings associations regarding requests for additional information or requiring corrective action under the Exchange Act. Should it become necessary, BTB will inform the Enforcement Division of Exchange Act or securities offering problems needing enforcement attention.

The regional office should determine if the savings association provides timely periodic Exchange Act filings. The regional office should maintain a schedule for each regional Exchange Act and 563g registered savings association indicating the due dates of all Exchange Act filings. This Handbook Section lists all common required filings and their respective time requirements. Regional offices should use this information to set up the schedules. Securities review staff maintain similar schedules and may assist the regional offices in setting up these schedules.

Savings associations must file required reports within prescribed time frames. Before the regional office contacts a savings association to inquire about a missing filing, they should first check with the assigned individual to determine if BTB has the filing. In certain instances a savings association may explain a late filing by filing Form 12b-25. Generally, this filing will allow a short extension of time to file certain reports. In addition, a savings association may inadvertently file reports with either BTB or the region, but not both. In such a case, BTB will direct the savings association to immediately file reports as required by the regulations, including Parts 563d and 563g.

Failure to file required reports on a timely basis may indicate deeper problems at a savings association. When regional regulators become aware of serious problems with a registrant savings association, they should immediately alert securities review staff by e-mail. Regional personnel should provide relevant supervisory information to securities review staff when practicable, rather than wait until completion of the next examination report.

Regional staff should quickly and promptly review all filings related to savings associations and holding companies to discover any information of supervisory interest. If regulators read the filings promptly, they may find serious problems disclosed in filings months before they would otherwise find them. A quick and timely review of filings may result in more timely initiation of a supervisory response that may require a restatement of earnings and financial position. In addition, the timely review of filings may lead to enforcement action, such as cease and desist, removal and prohibition, or receivership. Regional staff should not rely on securities review staff for this supervisory review. Further, regional staff should not duplicate the work of securities review staff in reviewing filings for compliance with the Exchange Act and Parts 563b, 563d, and 563g of the OTS regulations.

After a review of any filing, regional personnel should prepare a brief memorandum to securities review staff describing the review. The memorandum should disclose the existence of possible supervisory concerns and corrective actions that the regional office recommends. If the regional office notes problems, the filing will receive higher review priority. In the absence of such disclosure of potential concerns, the filing will likely receive a lower review priority. If necessary, securities review staff will prepare and issue a comment letter to the savings association concerning the disclosure problems. The regional office should promptly provide this memorandum via e-mail to securities review staff who will include the information in the shared electronic file.

When a savings association files an offering circular pursuant to Part 563g, BTB generally issues an initial comment letter on the filing within 14 to 30 calendar days of the filing date. This comment letter will generally include comments from the individual assigned to the savings association. Accordingly, regional staff should review offering circulars and provide any relevant information via e-mail to BTB within ten calendar days of filing. Satisfying this time frame will allow BTB to consider such information within the initial review period.

Regional regulators should be aware of significant events that have occurred requiring the filing of a current report on Form 8-K. The regional regulators should determine if the filing is timely. Consult with BTB if there is a question regarding the necessity of making a filing.

Filers must properly file and receive BTB clearance of proxy soliciting materials (or information statements, when applicable) before distribution to stockholders. Regional regulators should note these required steps. In addition, while not necessary, regional regulators may review proxy materials. If they do review proxy material, they should notify security review staff immediately by e-mail if they believe any proxy materials contain a material misstatement or omit any material information.

Regional regulators should be alert to changes in the majority of a savings association's board of directors resulting from actions other than a meeting of the stockholders. Regional regulators should promptly consult with BTB if questions arise regarding a change in the majority of a board of directors. Also, regional regulators should immediately notify BTB if problems arise.

Regional regulators should identify any savings associations with assets of more than \$5 million that have 300 or more shareholders and a class of stock not registered under the Exchange Act. Also, regional regulators should identify formerly registered savings associations. Interpretive questions sometimes arise as to the meaning of "held of record" or "class" and regional regulators should refer these questions to BTB. If it appears that a savings association should have registered its stock under the Exchange Act, the regional office should advise securities review staff. The trigger for this inquiry is 300 shareholders because:

- Although 500 shareholders triggers registration under the Exchange Act, the number of shareholders may have increased to 500 or more since the last verification.
- Three hundred shareholders triggers deregistration.

Regional regulators should notify a savings association's officers, directors and significant shareholders of their responsibilities to file reports (with BTB in Washington and with the regional office) relating to their ownership of the savings association's securities. Savings association officers, directors and five percent or greater shareholders have ownership and transaction reporting requirements under the Exchange Act. The Exchange Act requires this information on Forms 3, 4, or 5 and Schedule 13D or 13G. The rules in this area can be extremely complex and there is a large body of judicial precedent dealing with this area. Refer questions regarding interpretation to BTB. Regional regulators should encourage those with obligations to file such reports to consult with their own counsel regarding their filing responsibilities.

Regional personnel should refer all comments or discovery of material information regarding savings and loan holding companies that are subject to Exchange Act filing requirements to BTB. Securities review staff will assess the materiality of the information for purposes of securities law obligations and will work with the regional personnel in deciding an appropriate response under the circumstances. Securities review staff will assess the information to determine whether a referral to the SEC is appropriate.

Regional office personnel are responsible for contacting holding companies that are not filing Form H-(b)11 as required. The inclusion of SEC filings in Form H-(b)11 does not mean that OTS necessarily has a role in performing disclosure review of those documents. Regional regulators should provide any comments to BTB for all securities filings that the holding companies provide and send BTB related correspondence and examination reports upon request.

Regional office personnel should also advise APD of any significant accounting disclosure problems and accounting issues noted during their review of Forms H-b(11) for holding companies that have thrift subsidiaries that file Securities Exchange Act filings with the SEC and/or the OTS.

You should report information concerning accounting or reporting problems that may affect the Thrift Financial Report (TFR) to the Financial Reporting Division (FRD), Dallas, TX. The staff of the FRD in Washington, DC can answer questions and provide advice concerning the correct completion of TFRs. Institutions should correct TFRs that are less than five months old in accordance with FRD's guidance.